

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-112683-09

Date:

August 13, 2009

Legend:

Taxpayer	=
Donor	=
Date 1	=
Date 2	=
Date 3	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Attorney	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
a	=
b	=
c	=
d	=
e	=

Dear :

This letter responds to a letter from your authorized representative dated March 4, 2009, and other correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Donor's generation-skipping transfer (GST) exemption to transfers to CRUTs 1, 2, and 3.

The facts and representations submitted are summarized as follows: In Year 3, on Date 1, Donor executed three charitable remainder unitrusts (CRUTs): CRUT 1 for Grandchild 1; CRUT 2 for Grandchild 2; and CRUT 3 for Grandchild 3. Each CRUT provides for the annual payment of a unitrust amount for life to the named grandchild. At the grandchild's death, the remainder of each CRUT will be paid to specified charities. In Year 3, on Date 2, Donor funded CRUTs 1, 2, and 3 with shares of publicly traded stock.

Donor's attorney and tax advisor, Attorney, drafted the CRUTs but never advised Donor as to the GST tax consequences of the unitrust payments to Grandchild 1, Grandchild 2, and Grandchild 3.

Donor relied on Attorney to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Donor's Date 2 transfers to CRUTs 1, 2, and 3. Attorney reported the value of the transfer to each CRUT but did not allocate any part of Donor's GST exemption to Donor's transfers to CRUTs 1, 2, and 3. Thus, no part of Donor's GST exemption was allocated to CRUTs 1, 2, and 3.

However, in Years 1, 2, 4, and 5, portions of Donor's GST exemption were allocated to an irrevocable potential skip trust that Donor created in Year 1 as follows: a in Year 1; b in Year 2; c in Year 4; and d in Year 5. Also, in Year 6, e of Donor's GST exemption was allocated to direct skips Donor made in that year.

Donor died on Date 3. Donor's estate (Taxpayer) learned of the GST tax consequences of the unitrust payments from CRUTS 1, 2, and 3 when the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was being prepared for the estate.

Taxpayer requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Donor's available GST exemption in Year 3 (after taking into account the allocations in Years 1, 2, 4, 5, and 6) to Donor's Date 2 transfers to CRUTs 1, 2, and 3.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a skip person. In general, under § 2652(a)(1), the transferor, for GST tax purposes, is defined as the last person with respect to whom the transfer was subject to an estate or gift tax.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property

with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip, reduced by any charitable deduction allowed under § 2055 or § 2522 with respect to such property.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an

extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Taxpayer is granted an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Donor's GST exemption available in Year 3 (after taking into account the allocations of Donor's GST exemption in Years 1, 2, 4, 5, and 6) to Donor's Date 2 transfers to CRUTs 1, 2, and 3, based on the Date 2 gift tax values of those transfers. The allocations will be effective as of Date 2. The Date 2 gift tax values of the transfers will be used in determining the inclusion ratio of each CRUT.

The allocations should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we are not ruling on whether CRUTs 1, 2, and 3 will have zero inclusion ratios as a result of the allocations of Donor's GST exemption to the Date 2 transfers to CRUTs 1, 2, and 3.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curtis G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: